



AS (12) RP 3 E
Original: English

REPORT

FOR THE GENERAL COMMITTEE ON DEMOCRACY, HUMAN RIGHTS AND HUMANITARIAN QUESTIONS

The OSCE: A Region of Change

RAPPORTEUR
Mr. Coşkun Çörüz
The Netherlands

MONACO, 5 - 9 JULY 2012

DRAFT REPORT FOR THE GENERAL COMMITTEE ON DEMOCRACY, HUMAN RIGHTS AND HUMANITARIAN QUESTIONS

Rapporteur: Mr. Coşkun Çörüz (The Netherlands)

Introduction

In the 37 years since the coming about of the Helsinki Final Act, the region of the Organization for Security and Co-operation in Europe (OSCE) has seen change of a magnitude with few precedents in world history. In 1975 when East and West recognized that the protection of human rights and humanitarian questions were a matter of international concern and an essential element of conflict prevention, they did so in the context of the Cold War and *détente*, in an effort to avoid the potentially catastrophic consequences of the decades-long nuclear arms race.

The basic idea that the condition of human rights in one country affects the security of other countries was taken to a new level after the historic changes of 1989 – 1991, when the Iron Curtain fell, the Cold War ended, and the dissolution of the Soviet Union gave birth to a new group of independent states. In the 1970s and 1980s the Helsinki Final Act's Human Dimension inspired the creation of important human rights groups, like the Helsinki Groups and Charter 77, and provided them with a legitimacy that contributed to the collapse of Communist monopoly rule in Central and Eastern Europe. In the 1990s international relations in the OSCE region were defined anew. The treatment of national minorities and its effect on interstate relations, for example, became a burning issue for our region. With the threat of new types of international conflicts and tensions between newly created states, the Helsinki framework was further developed into a comprehensive set of norms and standards for human rights and conflict prevention, starting with the 1990 Copenhagen Document, the 1990 Charter of Paris for a New Europe, and the 1991 Moscow Document. OSCE field missions were established to assist participating States with the establishment of good governance, including the implementation and monitoring of their Human Dimension commitments. Also own Assembly was established to underline the importance of democracy in the OSCE region.

We have come a long way since then. The first decade of the 21st century saw further changes and some hopeful developments. The end of several violent ethnic conflicts, peaceful revolutions in some of the new states, and economic growth in many more brought hope for a wider respect for OSCE commitments in the field of democracy and human rights.

But, it must be admitted, change in the OSCE region in recent years has in some respects also meant *regression* in meeting those OSCE democratic commitments, and this should be a matter of grave concern for all of us. Through our election observation activities we know that there have been serious problems with a series of recent elections in the OSCE area. In some states, democratic trends have been halted or reversed; in others ethnic violence has resurfaced. Political opponents and human rights activists have been imprisoned without due process. Some OSCE field missions have been closed down, not because their work was completed, but because they were considered a political nuisance by a particular country. In several other participating States, our missions are forced to operate under restricted mandates. Furthermore, as our Assembly discussed extensively last year in the wake of the 2010 Astana Summit, the OSCE has not been able to overcome its decision-making

weaknesses in the Human Dimension, most pointedly with regard to the consensus rule¹, as well as the restrictive structure and limited transparency of the Permanent Council meetings.

It would be advisable to revise and strengthen tools, such as the Human Dimension Implementation Meeting (HDIM), to provide a proper, genuine form for monitoring the participating States' compliance with human rights commitments. As civil society, independent media and political pluralism continue to be stifled in many participating States, the OSCE, including the OSCE PA, must continue to develop existing forums and establish new mechanisms to engage these actors in our work.

The OSCE's standards in the Human Dimension are minimum standards. It is always advisable to take into account a country's national history and culture when assessing the human rights situation and the functioning of democracy in a participating State. We need to recognize that a country's political system and the quality of its rule of law are in many respects the outcome of its own particular history. We need to acknowledge that calling a participating State to account in a human rights case may cause it to resent this as interference and to point to other cases in other countries that also have their shortcomings.

Still, the idea behind the Helsinki Agreements and the OSCE, particularly in the field of human rights, has always been that certain principles transcend national boundaries and are applicable to anyone, in any situation, anywhere, regardless of culture, religion, history, and politics. They are applicable not just East of Vienna or West of Vienna, but everywhere in the OSCE area, no matter how much change this region has seen. These principles concern all of us. This is why since 1991 we have the Moscow Mechanism. It enables a group of participating States to establish ad hoc missions of independent experts who assist in the resolution of national issues involving serious and persistent violations of human rights. As this Assembly declared last year, the Moscow Mechanism should be updated and implemented more often and more substantively.

Chairmanships

The first responsibility for guaranteeing the OSCE commitments in the field of human rights and fundamental freedoms lies with the OSCE participating States. Accepting the adage that the price of leadership is responsibility, it can be argued that, as our governments in the Helsinki Document of 1992 institutionalized the annual Chairperson-in-Office, there rests a particular responsibility with the OSCE Chairmanship not only to provide political leadership to the Organization, but also to set a good example with regard to observing OSCE commitments. As our Assembly and other institutions have noted before, recent developments in the country that will chair the OSCE in 2013, in particular in the run-up to its parliamentary elections in October, are worrisome². Promises of democratic reforms by a former OSCE Chairmanship have also not been fulfilled.

¹ As the rapporteur of this Committee stated last year the OSCE has the possibility, based on a Ministerial Council decision taken in Prague on 30 – 31 January 1992, to act by calling, where necessary, on the so-called “consensus minus one” procedure, that allows the Permanent Council to take a political initiative, even where there is no consent on the part of the country concerned, in the case of clear, gross and uncorrected violations of OSCE commitments. However, this procedure has been invoked only once, in 1992, in the case of the Socialist Federal Republic of Yugoslavia.

² Resolution 1862 (2012), Parliamentary Assembly, Council of Europe

More generally, it must be realized that the Chairmanship of the OSCE tends to contribute to a country's international respectability, and it certainly brings visibility. A country that has the ambition to preside over an organization such as the OSCE can expect closer scrutiny of the way it fulfils its commitment to our Organization's founding principles. This should be true for the Troika as a whole, for the incoming Chairmanship as well as for the outgoing. In the past, when decisions had to be taken on future Chairmanships, we have seen debates about whether a particular country was 'ready' for the OSCE Chairmanship. However, the responsibility to behave in an exemplary way with regard to OSCE democratic and human rights principles does not end with the period of the Chairmanship. It would be advisable that countries plan for a follow-up and deepening of their commitment to OSCE standards and mechanisms once their Chairmanship has ended. Thus the period of a Chairmanship can serve to inspire a country to a strengthened and revitalized participation in the OSCE in subsequent years. The OSCE as a whole would stand to benefit from this process.

Judicial Independence

Last year the Rapporteur of this Committee concluded that “[t]here can be no stability or security where there is no respect for democracy and the rule of law and where an independent judicial system [is] unable to develop”³. An independent judiciary is key to good governance, and that is why our governments have included this element in all the major OSCE documents on the Human Dimension. The 1990 Copenhagen Document states that the independence of judges is “essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings”⁴, whereas further mention of this is made in the 1991 Moscow Document, the Charter for European Security of the 1999 Istanbul Document and the 2006 Brussels Declaration on Criminal Justice Systems. The Ministerial Council in 2005 recognized that the right to a fair trial, the right to an effective remedy, and the right not to be subjected to arbitrary arrest or detention constitute the basis of rule of law⁵.

With these documents every participating State has committed itself to delivering an independent judicial branch, with judges who can be elected or appointed, evaluated, and disciplined in such a way that their decisions are insulated from biased or improper influence. These judges should have the power to challenge the executive and/or legislative branches of Government and therefore be financially independent.

Participating States should guarantee the transparency of judicial processes. If they do not do so, they run the risk that judicial decisions in their country are open to multiple interpretations and can be regarded as having been politically motivated. This appearance should be avoided. There should not be any political prisoners in the OSCE area.

The OSCE participating States have the responsibility to provide for fair trials and competent tribunals not only for political activists, but for “all human beings” as they stated in the 1990 Copenhagen Document⁶, and that includes access to justice for those who have been accused

³ Annual Session 2011 Report for the General Committee on Democracy, Human Rights and Humanitarian Questions, “Strengthening the OSCE's Effectiveness and Efficiency – A New Start After the Astana Summit”, p. 5

⁴ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990

⁵ Document of the Thirteenth Meeting of the Ministerial Council, Ljubljana, 5 – 6 December 2005, Decision No. 12/05 on Upholding Human Rights and the Rule of Law in Criminal Justice Systems

⁶ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990

of terrorist activities. This Assembly has repeatedly criticized the lack of due process in the Guantanamo detention facility and has called for the permanent closing of this prison as soon as possible. The last time we did so was at the Annual Session in Oslo in 2010⁷, when it looked like the new U.S. President would live up to the high expectations of change he had raised in this regard during his election campaign. However, in 2012 we have to conclude that Guantanamo is still open. Last January it marked its tenth anniversary. There are 171 terrorism suspects still being detained indefinitely without trial. In fact, in the United States there is now a debate whether President Obama's recent signing of the National Defense Authorization Act has made it possible to jail even United States citizens in Guantanamo without a trial. To anyone who values the integrity of the judicial process and the United Nations Standard Minimum Rules for the Treatment of Prisoners, this must be cause for concern.

In the 2006 Brussels Declaration on Criminal Justice Systems the OSCE Ministerial Council linked independence of the judiciary to the protection of legal practitioners when it said that "All necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer, without discrimination and without improper interference from the authorities or the public"⁸. This commitment has been violated in several participating States in recent years, most visibly in the case of the Russian lawyer Sergey Magnitsky, who died in prison in November 2009, after what President Medvedev's Human Rights Council called an unlawful arrest and a detention marked by beatings and torture aimed at extracting a confession of guilt, during which prison officials instructed doctors not to treat him⁹. It is self-evident that the future protection of legal practitioners in Russia requires that those responsible for Magnitsky's death are brought to justice.

Prison Reform

Different from other international organizations such as the United Nations and the Council of Europe, the OSCE has not developed binding standards in the field of prison conditions and the systematic inspection of prisons is limited. Instead, the OSCE's work in the area of prison reform is based on technical expertise assistance as well as the establishment of discussion forums for the exchange of experience between its participating States. The OSCE primarily relies on the United Nations legal documents for setting standards for prison conditions, like the UN Standard Minimum Rules for the Treatment of Prisoners.

Whereas the 1989 Vienna Document called on participating States to accede to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, by now all have done so. However, not all OSCE participating States have ratified the Optional Protocol to this Convention, which gives it teeth by establishing an international inspection system for places of detention and which has been in force since 2006.

Within the OSCE-framework our governments have repeatedly expressed their intention to protect human rights in prisons. In the 1991 Moscow document, for example, the participating States committed themselves to treat all persons deprived of their liberty with humanity and

⁷ Annual Session 2010, Oslo Declaration, Resolution on Guantanamo, p. 32

⁸ Document of the Fourteenth Meeting of the Ministerial Council, Brussels, 4 – 5 December 2006, Brussels Declaration on Criminal Justice Systems. This Declaration continued to state that: "Lawyers should not suffer or be threatened with any sanctions or pressure when acting in accordance with their professional standards".

⁹<http://russian-untouchables.com/rus/docs/Civil-Right-Council-conclusion-report-Executive-summary-ENG.pdf>

with respect for the inherent dignity of the human person and to respect the internationally recognized standards that relate to the administration of justice and the human rights of detainees¹⁰. The Ministerial Council has made similar statements in Brussels in 2006 and in Helsinki in 2008.

The most relevant OSCE document specifically addressing prison conditions is the Final Report of the Supplementary Human Dimension Meeting on Prison Reform of 2002. This focuses on measures to improve the physical conditions of prisons, alternative sentencing measures to reduce prison populations and measures to rehabilitate prisoners. Other recommendations include transferring penitentiary systems from the Ministry of the Interior to the Ministry of Justice, demilitarizing and democratizing the penitentiary service, maintaining dialogue with Civil Society on reforms in the penitentiary system and establishing an effective structure for monitoring the implementation of human rights within the penitentiary service. Still, there are difficulties in the ways our countries live up to these commitments.

We need to acknowledge that those who administer justice and those who are ultimately responsible for the prison regime in a country often face a dilemma that makes it difficult for states to live up to these commitments: how to ensure that all individuals in detention will be treated with humanity, while at the same time not to raise the public perception that prison conditions resemble those in luxury hotels? How to strike a balance between punishment and lawful deprivation of freedom on the one hand and a prison regime in accordance with international standards of human rights on the other hand? This dilemma draws no line of division in the OSCE area; all participating States struggle with it, especially in times of economic crisis. It may be easy to answer the question how much a prisoner costs, but it is seldom easy to explain why a government should spend money on people who have broken the law.

Apart from the fundamental principle that also persons deprived of their liberty deserve to be treated with respect for their inherent dignity, there is the point that prisons should and need not become hotbeds of conflict, criminality and instability. Projects of the OSCE field missions aimed at the improvement of prison conditions should be understood as part of the OSCE's wider conflict-mitigation approach. As the flagship of this organization, the OSCE field missions have conducted admirable work in the field of prison reform.

The OSCE Centre in Bishkek organized a roundtable discussion on a new vision for prisons in Kyrgyzstan, which was attended by Members of Parliament, officials from ministries, law enforcement bodies, civil society and international organizations. This meeting focused mainly on development of a new strategy for the prison system, including improving conditions for prisoners sentenced to life terms. Recent unrest in Kyrgyzstan's prisons, resulting from the involvement of organized crime and demands that organized crime leaders be held under an "open door" policy, posed a high risk both for detainees and the public in general. The open cooperation of prison authorities with civil society during the unrest attests to the willingness of Kyrgyzstani authorities to improve the penitentiary system in line with international standards. The OSCE continues to follow the situation closely.

The OSCE Office in Yerevan in 2009 supported a study on the conditions of persons deprived of their liberty in disciplinary cells and the penal battalion of the Armenian Defence Ministry.

¹⁰ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991

The report proposed bringing detention conditions in line with UN and European prison rules, as well as discussed in detail the procedure of imposing isolation as a form of disciplinary sanction. In particular, it recommended harmonizing the practical application of disciplinary penalties with the requirements of the European Convention on Human Rights as well as introducing legislative amendments to ensure long-term visits to convicted persons in the battalion. Recently, the Parliament has also adopted a new law ruling out isolation as a form of disciplinary sanction.

The OSCE Office in Tajikistan, for example, works to assist the authorities in meeting its human dimension commitments, in particular with regard to human rights. Together with national interlocutors, the OSCE Office in Tajikistan has identified prison reform as an important priority. In recent years the Office organized trainings for penitentiary officials, covering topics such as domestic mechanisms for protection of prisoner rights, prosecutorial oversight of detention facilities, the role of the Human Rights Ombudsman in protecting and promoting rights of detainees, and practical implementation of international commitments in the work of correctional facilities. The OSCE has also supported training and expert consultations on monitoring of places of detention for representatives of government and civil society.

In 2008 the OSCE Mission to Bosnia and Herzegovina initiated prison monitoring throughout the country in which special attention was given to the treatment of vulnerable groups of prisoners, like women and juveniles. Monitoring also included material conditions, oversight mechanisms, educational and work related activities, health care and nutrition. The OSCE Mission assists the domestic authorities with the establishment of a National Preventive Mechanism in line with the Optional Protocol to the United Nations Convention against Torture, promoting to the extent possible the establishment of a functional mechanism that incorporates the civil society sector in the monitoring work.

Conclusions

The OSCE has always been a region of change. Although the OSCE has made substantial progress in many fields, for example in the fight against human trafficking or the fight against terrorism, it is disconcerting to note that this change in recent years has included a *regression* in meeting OSCE human rights commitments in the Third Dimension in several of the participating States. However, the idea that the condition of human rights in a participating State concerns the security of others has not changed since 1975. If the Human Dimension of the OSCE is to function properly, the annual Chairmanships have to set a good example and show their worth in the field of democracy and human rights.

The state of a nation's judiciary branch and its penal system reveal a lot about how an OSCE participating State performs in the Human Dimension field. OSCE commitments leave no room for politically motivated court cases, nor is there any room of arbitrary refusal of prison inspections by international organizations.

There is a need for *transparency* as the link between judicial independence and prison conditions. If international and OSCE standards in these fields are fully implemented, the judicial process and the execution of court decisions will be readily understandable for outside observers. If that is not the case, the judicial system risks the loss of its legitimacy and endangers the rule of law. Our governments – *all* our governments – have committed themselves time and again to prevent this from happening.